



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 2517-99
10 November 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: BMI [REDACTED], USN, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Three DD Forms 149 dtd 15 Apr 99, each w/attachment
(2) PERS-832C memo dtd 6 Jul 99
(3) PERS-313D1 memo dtd 23 Jul 99
(4) PERS-852 memo dtd 13 Aug 99
(5) PERS-311 memo dtd 14 Oct 99
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing his conviction by general court-martial (GCM) of 19 April 1997. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) Enlisted Performance Branch (PERS-832C) has recommended that his GCM conviction be removed. In correspondence attached as enclosure (3), the NPC Records Control and Quality Assurance Section (PERS-313D1) indicates that his GCM conviction has been removed. He further requested removal of his adverse enlisted performance evaluation report for 16 November 1996 to 19 April 1997, a copy of which is at Tab A. He also requested consideration by the Fiscal Year (FY) 1998 Chief Petty Officer (CPO) Special Selection Board. Finally, he requested that he be allowed to reenlist. The Board did not consider the last request, since he has been allowed to reenlist.

2. The Board, consisting of Messrs. McCulloch, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 4 November 1999, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (4), the NPC Enlisted Advancements Section (PERS-852) has commented to the effect that Petitioner's request for consideration by a special selection board has some merit and warrants partial favorable action. This advisory opinion states in pertinent part as follows:

- 1...[Petitioner] was eligible for the FY-98 [CPO] Selection Board, however his recommendation was withdrawn for advancement due to the court-martial...
- 2. [Petitioner] would be eligible for the FY-00 [CPO] Special Selection Board. Eligibility for the previous two years has terminated, if [Petitioner] is selected from the FY-00 [CPO] Special Selection Board, he may petition [this Board] for backdating his advancement...

c. In correspondence attached as enclosure (5), the NPC Performance Evaluation Branch (PERS-311) has commented to the effect that Petitioner's request to remove his adverse enlisted performance evaluation report has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) through (5), the Board finds the existence of an injustice warranting the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period From	of Report To
22 Apr 97		USN	16 Nov 96 19 Apr 97

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

d. That Petitioner be considered by the FY-00 CPO Special Selection Board.

e. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

g. That Petitioner's request to be considered by the FY-98 CPO Special Selection Board be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-832C
6 Jul 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: BM1 [REDACTED], USN, [REDACTED]

Encl: (1) BCNR File 02517-99
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material.
2. The review indicates that the petitioner's General Court-Martial conviction was set aside by the Navy-Marine Corps Court of Criminal Appeals. Therefore, favorable action on this petition regarding removal of NAVPERS 1070/607's and any other issues dealing with the GCM are recommended.
3. An issue that needs to be addressed by PERS-311 is removal of the performance evaluation dated 19 Apr 97. Also, PERS-312G may be able to assist in correcting erroneous previous rating data and expired EAOS/OTHEREXT data reflected in the Enlisted Assignment Information System (EAIS).

[REDACTED]

Technical Advisor To The
Head, Enlisted Performance
Branch (PERS-832)

PERS 832 a/o makes reference to incorrect eaos/extoth. Verified that extension and eaos are both correct.



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2517-99

5420
Sers 313D1/1176
23 Jul 99

MEMORANDUM FOR ASSISTANT FOR BCNR MATTERS (PERS00XCB)

Subj: CORRECTION TO THE PERMANENT RECORD OF PETTY OFFICER
[REDACTED] USN, [REDACTED]

- Encl: (1)Your ltr PERS-00ZCB
(2)BCNR Docket No.2517-99
(3)Removed images
(4)Corrected and uncorrected record

1. A review of member's record indicates the correction as directed by enclosure (1) is completed.
2. Reference pertaining to the action has not been placed in the member's record.
3. Enclosures (2) through (4) are forwarded.

[REDACTED]

Asst Head, Records Control &
Quality Assurance Section

2517-99



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

1430

Ser 852/264

13 Aug 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
BM1 (EOD/S [REDACTED] USN [REDACTED])

Ref: (a) BUPERS INST 1401.2

Encl: (1) BCNR file #02517-99

1. Enclosure (1) is returned recommending that BM1 (EOD/SW) Douglas [REDACTED]'s request for a special board be approved. The documents illustrate that the punishment awarded to Petty Officer [REDACTED] was set-aside by the Navy-Marine Corps Court of Criminal Appeals on 26 January 1999. Petty Officer [REDACTED] was eligible for the FY-98 Chief Petty Officer Selection Board, however his recommendation was withdrawn for advancement due to the court-martial. Reference (a) ensures that selection board eligible enlisted members are given proper consideration for advancement.

2. Petty Officer [REDACTED] would be eligible for the FY-00 Chief Petty Officer Special Selection board. Eligibility for the previous two fiscal years has terminated, if Petty Officer [REDACTED] is selected from the FY-00 Chief Petty Officer Special Selection Board, he may petition the Board for Correction of Naval Record (BCNR) for backdating his advancement.

[REDACTED]
By [REDACTED]



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2517-99

1610
PERS-311
14 OCT 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: BM [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his performance report for the period 16 November 1996 to 19 April 1997.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire not to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired. Pers-322 did not receive a statement from the member.

b. The report in question was prepared upon the member's reduction in rate as required by reference (a), Annex D, paragraph D-9.f and Annex Q, paragraph Q-2.c., due to a conviction by General Courts-Martial (GCM).

c. The member provides documentation of his GCM conviction being set aside by the Navy-Marine Corps Court of Criminal Appeals on 13 January 1999. Per reference (a), Annex N, paragraph N-13, the comments are now inappropriate. As all the member's rights and privileges have been restored, we feel this report is now inappropriate.

d. The member does not prove the report to be unjust or in error.

3. We recommend removal of the report in question.

[REDACTED]
Head, Performance
Evaluation Branch